

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TRUSTWORTHY LLC, d/b/a DAYS INN,

Plaintiff,

-against-

VERMONT MUTUAL INSURANCE GROUP,

Defendant

**Action removed from:
Clinton County Supreme
Court Index No.:
2016-00000265**

8:16-cv-367 (GLS/DJS)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant sued herein as Vermont Mutual Insurance Group, by and through its attorneys, Bowitch Coffey, LLC, hereby files this Notice of Removal, removing the above-captioned matter from the Supreme Court of Clinton County, New York, and in support thereof, states as follows:

Statement of Removal

1. The following Exhibits are attached hereto and incorporated herein by reference:

Exhibit A	Summons, Complaint and receipt of Clinton County Clerk
Exhibit B	Printout of NYS Secretary of State records for Trustworthy LLC
Exhibit C	Printout of records from Vermont Secretary of State

2. On March 2, 2016, Plaintiff Trustworthy LLC, d/b/a Days Inn ("Plaintiff") filed a Complaint in the Supreme Court, Clinton County, and the clerk assigned Index Number 2016-00000265. Pursuant to 28 USC § 1446(a), a copy of the Complaint, with (last page) Index Number receipt from the Clerk is attached hereto and incorporated herein as Exhibit A.

3. Plaintiff served Defendant at its location in Montpelier, Vermont on March 14, 2016.

4. Defendant, sued herein as Vermont Mutual Insurance Group ("Defendant"), has not yet served a response to the Complaint in the Clinton County Supreme Court action and the time to do so has not yet lapsed.

5. Pursuant to 28 U.S.C. § 1441(a), removal of an action originally filed in state court is proper in “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.”

6. Additionally, 28 U.S.C. § 1332(a) provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between... citizens of different States.”

7. Because this case involves claims in excess of \$75,000 between citizens of different states, it lies within the original subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a).

Diversity of Citizenship

8. There is complete diversity between Plaintiff and Defendant in this action.

9. Per the Summons and Complaint, Plaintiff Trustworthy LLC d/b/a Days Inn was and is a resident of the State of New York, County of Clinton, with a business address of 8 Evereth Drive, Plattsburgh, New York (see Complaint ¶ 7 at Exhibit A).

10. Plaintiff based the venue of the action in Clinton County on the business address of Plaintiff, that being 8 Evereth Drive, Plattsburgh, New York (see Summons, Exhibit A).

11. The subject Complaint does not specifically indicate which state the corporate defendant is incorporated in. However, an online search of the records of the New York Secretary of State performed by your deponent on March 30, 2016 reveals that Trustworthy LLC is an active domestic New York corporation registered in Clinton County, New York on May 28, 2009. The Department of State (“DOS”) process address for Trustworthy LLC is listed as: Bhavik Jariwala, 8 Everleth Drive, Plattsburgh, New York 12901. The printout showing this online search is attached as Exhibit B.

12. Defendant Vermont Mutual Insurance Group is a corporation organized and existing under the laws of the State of Vermont, with its principal place of business at 89 State Street, Montpelier, Vermont (see Complaint, Exhibit A at ¶¶ 8-9).

13. On April 1, 2016, your deponent conducted an online search of the records of the Vermont Secretary of State. Said records set forth that Defendant Vermont Mutual Insurance Group is an active Trade Name with a Principal Office Business Address of PO Box 188, Montpelier, Vermont 05601 (Exhibit C)

14. Filed concurrent with this Notice of Removal is Rule 7.1 Corporate Disclosure Statement which sets forth that Vermont Mutual is a non-governmental corporation duly registered as a trade name with the Vermont Secretary of State with its principal office business address at PO Box 188, Montpelier, Vermont.

15. Accordingly, for diversity purposes, Defendant is a resident of the State of Vermont.

16. Therefore, there is complete diversity between Plaintiff and Defendant.

Amount in Controversy

17. Plaintiff's complaint asserts one cause of action (Exhibit A).

18. Plaintiff's claims total compensatory damages of \$157,000.00 and unspecified consequential damages (Complaint, Exhibit A, at "Wherefore" clause).

19. Accordingly, by the plain language of the Complaint, the amount in controversy in this action exceeds \$157,000.00, exclusive of interest and costs.

Removal Procedures

20. Removal of this action is timely under 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a) because this Notice of Removal is being filed within thirty (30) days of service of the Complaint.

21. Removal is properly made to the United States District Court for the Northern District of New York under 28 U.S.C. § 1441(a) because Clinton County, where this action is currently pending, is within the Northern District of New York. *See*, 28 U.S.C. § 118(c).

22. Defendant Vermont Mutual Insurance Group is filing written notice of the filing of this Notice of Removal with the Clerk of the Supreme Court of Clinton County concurrently with the filing of this Notice of Removal and is serving the same upon counsel for Plaintiff with Certificate of Service to this Court per 28 U.S.C. § 1446(d).

WHEREFORE, by this Notice of Removal, Defendant Vermont Mutual Insurance Group, hereby removes this action from the Supreme Court, Clinton County, New York, and requests that this action proceed as properly removed to this Honorable court.

DATED: April 1, 2016

BOWITCH & COFFEY, LLC

By: 

Daniel W. Coffey

Attorneys for Defendant Vermont Mutual Insurance Group

17 Elk Street

Albany, New York 12207-1014

Telephone: (518) 813-9500

TO: Jennifer M. Van Voorhis, Esq.
Merlin Law Group, P.A.
125 Half Mile Road, Suite 200
Red Bank, NJ 07701